

105TH CONGRESS
2D SESSION

S. 2608

To approve a mutual settlement of the Water Rights of the Gila River Indian Community and the United States, on behalf of the Community and the Allottees, and Phelps Dodge Corporation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 9 (legislative day, OCTOBER 2), 1998

Mr. KYL (by request) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To approve a mutual settlement of the Water Rights of the Gila River Indian Community and the United States, on behalf of the Community and the Allottees, and Phelps Dodge Corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This title may be cited as the “Gila River Indian
5 Community-Phelps Dodge Corporation Water Rights Set-
6 tlement Act of 1998” and is herein referred to as “this
7 Act.”

1 **SEC. 2. PURPOSE.**

2 It is the purpose of this Act—

3 (a) to ratify, approve and confirm the Settle-
4 ment Agreement among the Gila River Indian Com-
5 munity, Phelps Dodge Corporation, and the United
6 States of America;

7 (b) to authorize and direct the Secretary of the
8 Interior to execute and perform his duties under the
9 Settlement Agreement and this Act; and

10 (c) to authorize and direct the Secretary to per-
11 form certain actions which will assist in achieving a
12 settlement of the water rights claims of certain In-
13 dian tribes in the Little Colorado River Basin in Ari-
14 zona.

15 **SEC. 3. DEFINITIONS.**

16 As used in this Act, the following terms have the fol-
17 lowing meaning:

18 (a) “Allottees” shall mean the owners of bene-
19 ficial interests in allotted land within the Gila River
20 Indian Reservation.

21 (b) “Blue Ridge Reservoir” means that Res-
22 ervoir in Navajo County, Arizona, owned by Phelps
23 Dodge, as more fully described in the Settlement
24 Agreement.

25 (c) “CAP” shall mean the Central Arizona
26 Project, a reclamation project constructed by the

1 United States pursuant to the Colorado River Basin
2 Project Act of September 30, 1968, 82 Stat. 885, as
3 amended.

4 (d) “CAWCD” shall mean the Central Arizona
5 Water Conservation District, a political subdivision
6 of the State of Arizona, which has executed a con-
7 tract to repay to the United States the reimbursable
8 costs of the CAP.

9 (e) “Community” shall mean the Gila River In-
10 dian Community, an Indian community organized
11 under section 16 of the Indian Reorganization Act
12 of June 18, 1934, 48 Stat. 987, duly recognized by
13 the Secretary, and its members.

14 (f) “Community’s CAP Contract” shall mean
15 that contract between the Gila River Indian Commu-
16 nity and the United States, dated October 22, 1992,
17 providing for the delivery to the Gila River Indian
18 Community of up to 173,100 acre-feet per annum of
19 CAP water.

20 (g) “Globe Equity No. 59” shall mean the de-
21 cree entered June 29, 1935, in that action styled as
22 The United States of America v. Gila Valley Irriga-
23 tion District, et al., Globe Equity No. 59 in the Dis-
24 trict Court of the United States in and for the Dis-
25 trict of Arizona, as amended and supplemented.

1 (h) “Hopi Tribe” shall mean the federally rec-
2 ognized Indian tribe of that name.

3 (i) “Navajo Nation” shall mean the federally
4 recognized Indian tribe of that name.

5 (j) “Phelps Dodge” shall mean Phelps Dodge
6 Corporation, a New York corporation, its subsidi-
7 aries, affiliates, predecessors, successors and assigns.

8 (k) “Pueblo of Zuni” shall mean the federally
9 recognized Indian tribe of that name.

10 (l) “Reservation” shall mean the Gila River In-
11 dian Reservation, as it existed on the Initial Effec-
12 tive Date of the Settlement Agreement, as shown on
13 the map attached to the Settlement Agreement as
14 exhibit “B” thereto.

15 (m) “San Juan Southern Paiute Tribe” shall
16 mean the federally recognized Indian tribe of that
17 name.

18 (n) “Secretary” shall mean the Secretary of the
19 Interior or his lawful designee.

20 (o) “Settlement Agreement” shall mean that
21 agreement dated as of May 4, 1998, among Phelps
22 Dodge, the Community and the United States.

23 (p) “SRP” shall mean the Salt River Project
24 Agricultural Improvement and Power District, a po-
25 litical subdivision of the State of Arizona, and the

1 Salt River Valley Water Users' Association, an Ari-
2 zona corporation.

3 (q) "United States" shall mean the United
4 States of America, in its capacity as trustee for the
5 Community and of the Reservation; as trustee for
6 the Allottees and of allotted lands on the Reserva-
7 tion; and, with respect to section 5.2 of the Settle-
8 ment Agreement, in all other capacities required in
9 order to execute the agreements and other instru-
10 ments and to take the actions referred to in section
11 5.2 of the Settlement Agreement, including acting
12 for the part of Defense Plant Corporation.

13 **SEC. 4. APPROVAL OF SETTLEMENT AGREEMENT.**

14 The Settlement Agreement is ratified, approved and
15 confirmed. The Secretary shall execute the Settlement
16 Agreement within sixty days of the enactment of this Act
17 and shall perform all of the Secretary's duties thereunder
18 as provided herein and in the Settlement Agreement.

19 **SEC. 5. TRANSFER OF RESERVOIRS.**

20 The Secretary shall take all actions specified in sec-
21 tion 5.0 of the Settlement Agreement necessary on the
22 Secretary's part to obtain title to Blue Ridge Reservoir
23 from Phelps Dodge. The title to Blue Ridge Reservoir,
24 once acquired by the Secretary, shall be held by the Sec-
25 retary in trust for the benefit of the Navajo Nation. In

1 connection with the Secretary's performance of his obliga-
2 tions under section 5.0 of the Settlement Agreement, the
3 Navajo Nation, the Hopi Tribe, the San Juan Southern
4 Paiute Tribe, the Pueblo of Zuni, and the United States,
5 on behalf of each of them, are authorized to execute waiv-
6 ers of claims against Phelps Dodge and agreements not
7 to object to certain uses of water by Phelps Dodge in sub-
8 stantially the form of Exhibits "E" and "J" to the Settle-
9 ment Agreement, which waivers and agreements are here-
10 by ratified, approved and confirmed. The Navajo Nation,
11 and the United States on behalf of the Navajo Nation,
12 is further authorized to enter into an agreement with the
13 Arizona Game and Fish Department confirming a mini-
14 mum pool of water in Blue Ridge Reservoir and for other
15 purposes in substantially the form of exhibits "G" and "I"
16 to the Settlement Agreement, which agreements are here-
17 by ratified, approved and confirmed.

18 **SEC. 6. REALLOCATION OF CAP WATER.**

19 Simultaneously with the transfer of Blue Ridge Res-
20 ervoir to the United States as provided for in section 5
21 of this Act, the Secretary shall: (i) reallocate to the Com-
22 munity 12,000 acre-feet of the CAP water available to the
23 Secretary pursuant to section 406(b) of title IV of Public
24 Law 101-628, 104 Stat. 4483; (ii) amend the Commu-
25 nity's CAP Contract to include the CAP water reallocated

1 to the Community pursuant to this section 6; and, (iii)
2 amend the Community's CAP Contract to extend the term
3 thereof to 100 years, plus such additional term as may
4 result from the exercise of the option provided for in, or
5 other extension of, the lease referred to in section 7 of
6 this Act.

7 (a) All water service capital charges and other
8 capital charges of any nature associated with the
9 CAP water reallocated to the Community pursuant
10 to this section 6 shall be nonreimbursable to the
11 United States by the Community.

12 (b) All water service capital charges and other
13 capital charges of any nature associated with 10,000
14 acre-feet of that CAP water currently available to
15 the Community under the Community's CAP Con-
16 tract which shares a priority with 510,000 acre-feet
17 of non-Indian municipal and industrial CAP water
18 shall be nonreimbursable to the United States by the
19 Community.

20 (c) For purposes of determining the allocation
21 and repayment of costs of the CAP as provided in
22 Article 9.3 of Contract Number 14-0906-09W-
23 09245, Amendment No. 1, between the United
24 States and CAWCD dated December 1, 1988, and
25 any amendment or revision thereof, all of the water

1 service capital charges and other capital charges of
2 any nature associated with the water described in
3 subsections 6(a) and 6(b) hereof shall be non-reim-
4 bursable and shall be excluded from CAWCD's re-
5 payment obligation.

6 (d) The United States shall either—

7 (1) not charge operation, maintenance, and
8 replacement (OM&R) charges to the Commu-
9 nity on the first 8,000 acre-feet of CAP water
10 made available to the Community pursuant to
11 this Act, and shall itself pay any such charges
12 as are associated with such 8,000 acre-feet of
13 CAP water; or

14 (2) charge the Community only that por-
15 tion of the OM&R charges associated with elec-
16 trical energy pumping for the entire 12,000
17 acre-feet of CAP water made available to the
18 Community pursuant to this section 6, and
19 shall itself pay all other OM&R charges associ-
20 ated with such 12,000 acre-feet of CAP water.

21 (e) In the event the CAP water made available
22 to the Community pursuant to this Act is leased to
23 Phelps Dodge as provided for in section 7 hereof,
24 the charges by the United States to Phelps Dodge
25 for such water when delivered under the Lease shall

1 be as provided in subsections (d)(1) or (d)(2) of this
2 section 6.

3 (f) In the event the exchange provided for in
4 section 8 of this Act is not approved, the Secretary
5 shall reallocate to Phelps Dodge 8,000 acre-feet of
6 the CAP water referred to in subsection 6(b) hereof,
7 shall amend the Community's CAP contract to re-
8 flect such reallocation, and shall enter into a con-
9 tract with Phelps Dodge for permanent service for
10 the delivery of such water to Phelps Dodge through
11 the works of the CAP. The CAP water shall be free
12 of all capital charges as provided in subsections 6(b)
13 and 6(c) of this Act. The United States shall charge
14 Phelps Dodge OM&R charges for such water only
15 as provided in either subsections 6(d)(1) or 6(d)(2)
16 hereof and shall itself pay such portions of the
17 OM&R charges as are not paid by Phelps Dodge.

18 (g) The provisions of section 226 of Public Law
19 97-293, 96 Stat. 1273, 43 U.S.C. § 485h(f) shall
20 not apply to actions taken by the Secretary pursuant
21 to sections 6, 7 or 8 of this Act.

22 **SEC. 7. CAP WATER LEASE.**

23 The lease referred to in section 7.0 of the Settlement
24 Agreement and attached thereto as exhibit "M" is hereby
25 ratified, approved and confirmed. Notwithstanding the

1 preceding sentence, the lease shall not be effective as to
2 the United States, and the Secretary shall not execute the
3 lease, until all environmental compliance associated with
4 the Secretary's execution of the lease has been completed
5 and the exchange referred to in section 8 of this Act has
6 been approved as provided in that section. In the event
7 the lease becomes effective, the Secretary and the Commu-
8 nity may renew or extend the lease at the end of the initial
9 term, or any extended term of the lease provided for in
10 the initial Lease, upon such terms as the Community, the
11 Secretary and Phelps Dodge may agree, provided that any
12 such renewal or extension shall not exceed 100 years in
13 term. Subject to the completion of environmental compli-
14 ance, CAP water made available pursuant to the lease may
15 be used in the manner and at the locations provided for
16 therein, including exchange for use in any county in Ari-
17 zona outside the CAWCD service area.

18 **SEC. 8. EXCHANGE AGREEMENT.**

19 The Secretary and the Community are authorized to
20 enter into an exchange agreement with Phelps Dodge pur-
21 suant to which the CAP water leased to Phelps Dodge by
22 the Community under the lease authorized under section
23 7 hereof is delivered by Phelps Dodge to the Community
24 in return for the right to divert water from the Gila River
25 upstream of the Reservation. The term of any such ex-

1 change agreement, if approved as required by this section
2 8, shall be for 100 years, plus any additional term occa-
3 sioned by the exercise of the option contained in the lease
4 or other extension authorized in the lease or this Act. The
5 Secretary shall commence negotiations with respect to the
6 exchange agreement forthwith upon the enactment of this
7 Act and shall process all environmental compliance associ-
8 ated with the exchange agreement and the lease in an ex-
9 peditious manner. The Secretary shall not execute the ex-
10 change agreement until all such environmental compliance
11 has been finally concluded as provided in the Settlement
12 Agreement and any necessary order approving the ex-
13 change, or any aspect of the exchange, has been obtained
14 from the United States District Court in Globe Equity No.
15 59 and the order is final and subject to no further appeal.

16 **SEC. 9. APPROVAL OF WAIVERS.**

17 The waivers set forth in section 9.0 of the Settlement
18 Agreement shall be effective, and shall be binding upon,
19 the Community, and the United States, on behalf of the
20 Community and the Allottees, from and after the date ei-
21 ther of the conditions set forth in section 4(c) of the Set-
22 tlement Agreement occurs. The United States is author-
23 ized and directed to execute the Settlement Agreement on
24 behalf of the Allottees in its capacity as trustee for the

1 Allottees and of allotted lands on the Reservation, and the
2 Settlement Agreement shall be binding upon the Allottees.

3 **SEC. 10. MISCELLANEOUS.**

4 (a) Execution of the Settlement Agreement by the
5 Secretary as required by this Act, and the Secretary's per-
6 formance of the actions necessary to acquire title to Blue
7 Ridge Reservoir for the benefit of the Navajo Nation pur-
8 suant to section 5.0 of the Settlement Agreement shall not
9 constitute major Federal actions under the National Envi-
10 ronmental Policy Act (42 U.S.C. § 4321 et seq.). The Sec-
11 retary shall carry out all environmental compliance re-
12 quired by sections 7 and 8 of this Act. Nothing in this
13 Act shall be construed as exempting the United States
14 from carrying out environmental compliance associated
15 with the use of water from Blue Ridge Reservoir by the
16 United States for the benefit of the Navajo Nation in the
17 Little Colorado River Basin in Arizona.

18 (b) The Navajo Nation, and the United States on be-
19 half of the Navajo Nation, are authorized to enter into
20 an agreement with the town of Payson, Arizona, and the
21 unincorporated communities of Pine and Strawberry, Ari-
22 zona ("the Towns") or any one of them, to subordinate
23 water rights held in Blue Ridge Reservoir by the United
24 States for the benefit of the Navajo Nation to rights to
25 the use of not to exceed a cumulative total of 3,000 acre-

1 feet per annum of water in Blue Ridge Reservoir acquired
2 by the Towns pursuant to the law of the State of Arizona.

3 (c) The Navajo Nation, and the United States on be-
4 half of the Navajo Nation, are authorized to enter into
5 an agreement with Phelps Dodge to subordinate water
6 rights held in Blue Ridge Reservoir by the United States
7 on behalf of the Navajo Nation to water rights acquired
8 by Phelps Dodge in Blue Ridge Reservoir subsequent to
9 the date of the enactment of this Act pursuant to the law
10 of the State of Arizona for use on land owned by Phelps
11 Dodge around Blue Ridge Reservoir identified in the Set-
12 tlement Agreement. The term of any such agreement and
13 the consideration to be paid therefor shall be as agreed
14 to among the Navajo Nation and Phelps Dodge.

15 (d) With regard to the environmental compliance re-
16 quired for the actions contemplated in Sections 7 and 8
17 of this Act, the Bureau of Reclamation shall be designated
18 as the lead agency, and shall coordinate and cooperate
19 with the other affected federal agencies as required under
20 applicable federal environmental laws.

21 (e) The Secretary and the Community are authorized
22 to execute any amendments of the Settlement Agreement
23 and to perform any action required by any amendments
24 to the Settlement Agreement which may be mutually
25 agreed upon by the parties.

1 (f) Except for the waivers authorized by Section 5
2 of this Act, nothing in this Act or the Settlement Agree-
3 ment shall be construed to quantify or otherwise affect
4 the water rights, claims or entitlement to water of any
5 Arizona tribe, band or community or of any claimant in
6 the Gila River Adjudication, other than the Community,
7 the United States on behalf of the Community and the
8 Allottees, and Phelps Dodge.

9 (g) Any party to the Settlement Agreement, and to
10 the lease and the exchange agreement referred to in sec-
11 tions 7 and 8 hereof, respectively, if the same are ap-
12 proved, may bring an action or actions exclusively in the
13 United States District Court for the District of Arizona
14 for the interpretation and enforcement of this Act, the
15 Settlement Agreement, the lease and the exchange agree-
16 ment, naming the United States and the Community as
17 parties, and in any such action or actions, any claim by
18 the United States or the Community to sovereign immu-
19 nity from suit is hereby waived.

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